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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-03-NY-125
	)	
L.A.C.A., State of New York, Inc.	)	
	)	NAL/Acct. No. 200432380007
Bronx, NY	)	
	)	FRN: 0007 8304 58

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: February 24, 2004**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that L.A.C.A., State of New York, Inc. ("L.A.C.A.") has apparently violated Section 301 of the Communications Act of 1934, as amended, ("Act")<sup>1</sup>, by operating an unlicensed radio transmitter on the frequencies 96.1 MHz and 96.5 MHz. We conclude that L.A.C.A. is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On June 19, 2003, the New York Office received complaints about an illegal broadcast station located in Bronx, NY, operating on the frequency 96.1 MHz, and causing interference to a FCC licensed radio station in New York, NY, operating on the frequency 96.3 MHz.

3. On June 21, 2003, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 96.1 MHz in Bronx, NY. The agent observed an unauthorized radio broadcast on 96.1 MHz, and positively determined the source of the broadcast to a FM broadcast antenna on the roof of 1112 Garrison Avenue, Bronx, NY 10474. The agent then conducted a station inspection with Rev. Fernando Rodriguez, president of L.A.C.A., who acknowledged the operation of the unlicensed radio station. The agent advised Rev. Rodriguez that the station on 96.1 MHz was causing interference to an FCC licensed station operating on 96.3 MHz. There was no evidence of a Commission authorization for this operation in Bronx, NY.

4. On June 23, 2003, the New York Office sent a Warning Letter, by Fax, First Class Mail and Certified Mail Return Receipt Requested, to L.A.C.A. for unlicensed operation on the frequency 96.1 MHz. In a June 25, 2003, telephone call with a Commission agent, Rev. Rodriguez acknowledged receipt of the

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<sup>1</sup> 47 U.S.C. § 301.

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faxed copy of the Warning Letter. The New York Office did not receive a written reply to the Warning Letter.

5. On June 26, 2003, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 96.1 MHz in Bronx, NY, observed unauthorized radio broadcast on 96.1 MHz, and positively determined the source of the broadcast to a FM broadcast antenna on the roof of 1112 Garrison Avenue, Bronx, NY 10474.

6. On August 4, 2003, the New York Office received a fax complaint letter from an FCC licensed station, in New York, NY, concerning interference to their broadcast on 96.3 MHz from a station in Bronx, NY, transmitting on 96.1 MHz.

7. On August 6, 2003, an agent from the FCC New York Office contacted Rev. Rodriguez by telephone and advised him of the complaint of interference being caused from a station operating on 96.1 MHz in Bronx, NY.

8. On September 22, 2003, the New York Office received another fax complaint letter from a FCC licensed station in New York, NY, concerning interference to their broadcast signal on 96.3 MHz, from a station in Bronx, NY, transmitting on 96.5 MHz.

9. On September 22, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 96.5 MHz in the Bronx, NY, and observed an unauthorized radio broadcast on 96.5 MHz, and positively determined the source of the broadcast to a FM broadcast antenna on the roof of 1112 Garrison Avenue, Bronx, NY 10474.

10. On September 27, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 96.5 MHz in Bronx, NY, and observed an unauthorized radio broadcast on 96.5 MHz, and positively determined the source of the broadcast to a FM broadcast antenna on the roof of 1112 Garrison Avenue, Bronx, NY 10474. The agents conducted a station inspection with Rev. Rodriguez and advised him of the station operation that was again causing interference to an FCC licensed station operating on 96.3 MHz. There was no evidence of a Commission authorization for this operation in Bronx, NY.

### III. DISCUSSION

11. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.

12. Based on the evidence before us, we find that L.A.C.A. willfully<sup>2</sup> and repeatedly<sup>3</sup> operated radio transmission equipment on: 96.1 MHz on June 21, 2003 and June 26, 2003; 96.5 MHz on September 22,

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such

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2003 and September 27, 2003, without a Commission authorization, in violation of Section 301 of the Act. A review of Commission's records showed that there was no evidence of a Commission authorization to operate this station on the frequencies, 96.1 MHz or 96.5 MHz in Bronx, NY.

13. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>4</sup>, sets the base forfeiture amount for operation without an instrument of authorization for the service at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act<sup>5</sup>, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules<sup>7</sup>, L.A.C.A. is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

15. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, L.A.C.A. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432380007 and FRN: 0007 8304 58.

17. Any response to this NAL must be mailed to Federal Communications Commission, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. 200432380007.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

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commission or omission is continuous, for more than one day.

<sup>4</sup>47 C.F.R. § 1.80.

<sup>5</sup>47 U.S.C. § 503(b)(2)(D).

<sup>6</sup>47 U.S.C. § 503(b).

<sup>7</sup>47 C.F.R. §§ 0.111, and 0.311.

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financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

20. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

21. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to L.A.C.A., 1112 Garrison Avenue, Bronx, NY 10474.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office

Attachment A – FCC Condensed List of Small Entities, October 2002

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<sup>8</sup> See 47 C.F.R. § 1.1914.